

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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SEAN O'TOOLE, KELLEY O'TOOLE,)
STEVEN DANIEL LEE, JENNIFER LYNN)
CURTIS, and JACK FOSTER,)
Plaintiffs,)
vs.) No. CV-11-01502 PJH
CITY OF ANTIOCH, ANTIOCH POLICE)
DEPARTMENT, JAMES HYDE, CHIEF OF)
ANTIOCH POLICE DEPARTMENT, NORMAN)
WIELSCH, JOSHUA VINCELET, JAMES)
WISECARVER JR., STEVEN AIELLO,)
AND DOES 1-20, inclusive,)
Defendants.)

DEPOSITION OF JAMES WISECARVER

Vallejo, California

March 13, 2015

ATKINSON-BAKER, INC.
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FILE NO.: A902F9F

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BE IT REMEMBERED THAT, pursuant to Notice and
on Friday, March 13, 2015 at 10:06 a.m. thereof at
521 Georgia Street, Vallejo, California, before me,
LAURA AXELSEN, a Certified Shorthand Reporter,
personally appeared

JAMES WISECARVER,
called as a witness by the plaintiffs.

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1 Q. Do you rely on the peace officers legal 10:38:32
2 sourcebook to rely upon the Fourth Amendment?

3 A. Yes, sir.

4 Q. Okay. So, uhm, are you -- you've
5 testified -- how many search warrant affidavits have 10:38:50
6 you written at -- from 2009 earlier?

7 A. I don't know the numbers, but I'd say
8 between 50 to 100.

9 Q. And when you write a search warrant, uhm,
10 do you have to be abreast of the law as it pertains 10:39:14
11 to the Fourth Amendment and search and seizure?

12 A. Yes, sir.

13 Q. Okay. Uhm, are you familiar with a case
14 called Terry versus Ohio?

15 A. Yes, sir. 10:39:31

16 Q. What is that?

17 MR. BLECHMAN: Calls for a legal
18 conclusion. You can respond. Overbroad as well.

19 THE WITNESS: It's a case law decision
20 that I -- I can't spout the details of it as we sit 10:39:43
21 here.

22 MR. PORI: Q. Okay. So have you ever
23 seen Terry versus Ohio mentioned in the peace
24 officers sourcebook?

25 A. I don't recall. 10:40:07

1 Q. Have you ever seen -- okay. So how are 10:40:08
2 you taught -- how do you know -- well, let me ask
3 you this way. Are there situations where you may
4 not approach someone and stop and frisk them if
5 you -- if you think that they might have possibly 10:40:30
6 some contraband in their possession?

7 MR. BLECHMAN: Incomplete hypothetical.
8 Vague and ambiguous. And overbroad. You can
9 respond.

10	THE WITNESS: I'm sorry. I'm confused by	10:40:43
11	the question.	

12 MR. PORI: Q. Sure. Are you aware of
13 any -- any situations where you not may [sic] simply
14 go up and walk -- walk up to someone and search
15 them? 10:40:50

16 MR. BLECHMAN: Same objections. Go ahead.

17 THE WITNESS: I'm sorry. I just don't
18 know what you mean by -- when you say I may -- I
19 "not may."

20 MR. PORI: Q. Okay. Let me ask you 10:40:58
21 this way. Tell me the -- the conditions under which
22 you may approach someone and stop them and search
23 them for contraband?

24 MR. BLECHMAN: Same objections. Also

25 calls for a legal conclusion. 10:41:11

1 Overbroad. Vague as to time. At any point in time 10:48:09
2 in his career?

3 MR. PORI: Yes.

4 MR. BLECHMAN: Is that the question?

5 MR. PORI: Q. Yeah, at any time in your 10:48:16
6 career, have you reviewed any learning domains
7 regarding the Fourth Amendment?

8 MR. BLECHMAN: Same objections.

9 THE WITNESS: Yes.

10 MR. PORI: Q. Where? 10:48:22

11 A. The police academy.

12 Q. And how long ago was that? Before 2009?

13 A. It was probably -- the police -- I went to
14 the police academy in the mid '90s.

15 Q. Okay. Okay. Do you -- uhm, do you own -- 10:48:45
16 do you personally own your own police officers legal
17 sourcebook?

18 A. I do.

19 Q. Do you refer to it when you are doing your
20 job as a police officer? 10:49:04

21 A. Yes, sir.

22 Q. Okay. And how often do you refer to it?

23 A. I guess it depends on what it is that I'm
24 doing. I -- I don't have an estimated frequency.

25 Q. Do you -- do you keep a copy with you? 10:49:18

1 | A. Yes, sir. | 10:51:13

2 Q. Okay. Is it fair to say that the
3 supervising officer is there to ensure that the
4 Antioch Police Department regulations and the -- the
5 law of California and the Constitution are -- are 10:51:29
6 followed?

7	A. Yes.
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8 Q. Okay. I want to ask you about an incident
9 that occurred at the Grow It Yourself Gardens
10 October 14th, 2009. That was a Wednesday. Do you 10:51:43
11 recall that?

12	A. I do.
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13 Q. Okay. And who -- who were the officers
14 who were present for that -- for the, uhm, response
15 to the Grow It Yourself Gardens in Antioch, 10:52:08
16 California?

17 A. I don't recall all of the officers
18 involved, however, I can tell you that I was
19 supervising the search as an acting sergeant.
20 Detective Josh Vincelet was there. Detective Steve 10:52:24
21 Aiello was there. Detective Desmond Bittner was
22 there. Detective Ron Krenz was there. Detective
23 Bergerhouse was there. And I don't recall who else.

24	0. Joannides?
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25	A. I believe Detective Joannides was there.	10:53:02
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1 Q. Okay. 11:26:33

2 A. I --

3 Q. But -- okay.

4 A. I don't even know who -- who would have

5 brought him down to the police department. 11:26:36

6 Q. So you usually -- is -- don't you usually

7 call for patrol and have somebody from patrol

8 transport a prisoner?

9 A. I don't recall if we had patrol do it or

10 if we had another detective do it. I don't 11:26:47

11 remember. It was long time ago.

12 Q. Okay. And you didn't review any documents

13 or anything in preparation of your testimony today,

14 did you?

15 A. I don't believe I actually wrote a -- a-- 11:27:01

16 a report for the Grow It Yourself Gardens.

17 Q. Okay. So you didn't review -- review any

18 report. You knew you were going to be deposed today

19 about the Grow It Yourself Gardens, right?

20 A. Yes, sir. 11:27:15

21 Q. And you've sat in a couple of these

22 depositions, right?

23 A. Yes, I have.

24 Q. And you know -- and which depositions did

25 you sit in? 11:27:20

1 Vincelet wrote for an additional marijuana grow in 11:28:39
2 Tulare Court.

3 Q. What else did you review?

4 A. Oh, I -- I reviewed a report that I wrote
5 for the -- for my involvement in a -- investigation 11:29:17
6 of an officer involved shooting located at
7 1017 H Street in Antioch.

8 Q. Anything else?

9 A. That's all that I can remember right now.

10 Q. Okay. Are you aware of whether or not the 11:29:43
11 City of Antioch has departmental regulations
12 regarding execution of search and arrest warrants?

13 A. There -- there is, yes.

14 Q. And have you reviewed those regulations
15 regarding execution and -- and search of felony 11:30:18
16 arrest warrants?

17 A. Not recently.

18 Q. Are you familiar with the material?

19 A. Vaguely.

20 Q. As a training officer, do you advise 11:30:29
21 officers to familiarize themselves with departmental
22 regulations of the Antioch Police Department?

23 A. Yes.

24 Q. I'd like this marked as 71, please?

25 MR. BLECHMAN: I think it's 70. 11:30:44

1 and secured the business. 11:43:30

2 Q. Okay. So you didn't have an operational
3 plan, though, did you?

4 A. It was a verbal op- -- op- -- operational
5 plan. 11:43:36

6 Q. Okay. It was a verbal operational plan.
7 Okay. And you didn't -- because you didn't have
8 time to get a written one?

9 A. If it would -- if -- if I would have
10 completed a written operational plan, it would have 11:43:51
11 slowed down the operation.

12 Q. Okay. And you've already testified you
13 don't know whether or not Steven Lee was removing
14 items from his -- from the store and putting them in
15 his car in relation to when the O'Tooles were 11:44:11
16 arrested, right?

17 A. That's correct.

18 Q. So you don't know if it was before or
19 after?

20 A. Correct. 11:44:21

21 Q. And that's not in -- that was -- that
22 information was not included in the search warrant,
23 correct?

24 A. I don't recall.

25 Q. Okay. Because you didn't review the 11:44:32

1 search warrant? 11:44:35

2 A. I don't believe I did.

3 Q. As operation -- as the -- the supervising

4 officer, you never reviewed the search warrant

5 before you went in to serve it into the Grow It 11:44:41

6 Yourself Gardens; is that correct?

7 A. I don't believe I did.

8 Q. Why didn't you review the search warrant

9 before you went into the Grow It Yourself Gardens?

10 A. Well, we went to the Grow It Yourself 11:44:53

11 Gardens before the search warrant was actually

12 written, and we removed all the occupants from the

13 business. So it hadn't been written yet.

14 Q. But you were -- I -- when I was -- my

15 question was, when the search warrant was -- was 11:45:09

16 executed -- when the search warrant was brought to

17 the store?

18 A. Oh.

19 Q. Right?

20 A. I'm sorry. You said when I went to the 11:45:17

21 business. I misunderstood.

22 Q. Okay. You didn't go into the business

23 with the -- to -- when the search warrant was

24 served?

25 MR. BLECHMAN: Vague and ambiguous. If 11:45:29

1 you understand, you can respond. 11:45:30

2 THE WITNESS: I'm sorry. I don't.

3 MR. PORI: Okay.

4 MR. BLECHMAN: I don't either.

5 MR. PORI: Q. Did you go in -- did you, 11:45:34

6 uhm, go into the business with any officer with a

7 search warrant when the search warrant was being

8 served on the business at Grow It Yourself Gardens?

9 A. I was at the business when the search

10 warrant was served. 11:45:44

11 Q. Okay.

12 A. I -- I didn't carry it in, if that's what

13 you mean.

14 Q. You didn't look at it before you went in?

15 A. No, sir. 11:45:51

16 Q. What were -- did you -- do you -- did you

17 assist in the search?

18 A. Yes, I did.

19 Q. And what -- what did you -- what were you

20 looking for? 11:45:58

21 A. Items listed in the search warrant, such

22 as evidence of marijuana cultivation and/or

23 marijuana sales.

24 Q. Okay. And how did you know what to look

25 for if you hadn't reviewed the search warrant 11:46:11

1 affidavit? 11:46:14

2 A. Because we were looking for items that
3 would be associated with marijuana cultivation and
4 marijuana sales, and I've done those investigations
5 before, so I would know what to look for. 11:46:23

6 Q. But you didn't look at what -- see what
7 the judge authorized you to look for, did he -- did
8 you?

9 A. I don't recall if I did or not.

10 Q. So you're -- when you went in to -- to 11:46:33
11 search the business, even though there was a warrant
12 in the hand -- in hand, you relied on your own
13 training and experience to conduct a search rather
14 than the -- the contents of the search warrant,
15 correct? 11:46:47

16 MR. BLECHMAN: Misstates the witness's
17 testimony. You can respond.

18 THE WITNESS: I don't recall reading the
19 search warrant. I might have. I don't recall if I
20 did, but I understand the investigation of marijuana 11:46:55
21 cultivation, and I understand the investigation of a
22 marijuana for sales investigation. So I --
23 therefore, I would know what to look for.

24 MR. PORI: Q. Okay. So you didn't know
25 whether there were any limitations placed upon -- on 11:47:15

1 you, as a police officer, in that search warrant by 11:47:18
2 the judge?

3 A. I was not aware of any limitations.

4 Q. Because you didn't look at the warrant?

5 A. I don't recall if I looked at the warrant. 11:47:27

6 Q. Is that something you would do?

7 MR. BLECHMAN: Vague and ambiguous.

8 Overbroad. Incomplete hypothetical.

9 MR. PORI: Q. When -- when serving a
10 search warrant at a location, would you review the 11:47:40
11 search warrant before entering the business?

12 A. Sometimes.

13 Q. Okay. Sometimes, sometimes not --

14 A. Correct.

15 Q. -- right? 11:47:49

16 A. Correct.

17 Q. Okay.

18 MR. BLECHMAN: You need a break or how are
19 you doing?

20 THE WITNESS: I'm good. 11:47:51

21 MR. PORI: You need a break?

22 THE WITNESS: I'm just -- my mouth's
23 getting dry.

24 MR. PORI: How about the court reporter?

25 You need some water, sir? 11:47:56

1 THE WITNESS: I'm doing good. I'm -- got 11:47:56
2 my water. Thank you.

3 MR. PORI: Madam Reporter, how we doing?

4 THE REPORTER: Okay.

5 MR. PORI: Q. Okay. Can we keep going? 11:48:01
6 All right. Did you arrest Daniel Leel?

7 A. Yes, I did.

8 Q. Okay. Did you write a report about the
9 arrest of Daniel Leel?

10 A. Yes, I did. 11:48:21

11 Q. And when you wrote your report about the
12 arrest of Daniel Leel, were you truthful?

13 A. Yes.

14 Q. Were you -- was the statements you made in
15 your report accurate? 11:48:29

16 A. To the best of my recollection.

17 Q. Did you complete all the elements of the
18 offense when you arrested Daniel Leel?

19 A. I believe so.

20 Q. Did you include any material misstatements 11:48:41
21 or inaccurate information in the police report that
22 you wrote after arresting Daniel Leel?

23 A. I wouldn't say that I completed any
24 inaccurate information.

25 Q. Okay. So essentially you were -- when you 11:48:57

1 A. In my police report I made the statement 11:50:01
2 that we were serving a search warrant on the
3 business, which could be construed as the Grow It
4 Yourself Gardens. We were in the process -- in
5 actuality, we were in the process of serving the 11:50:17
6 search warrant. We just had not received the search
7 warrant itself. The detective was still working
8 with the judge to get the search warrant signed.

9 Q. Did you write in your police report on
10 October 14th, 2009, the Antioch narcotics unit was 11:50:32
11 conducting an investigation into the Grow It
12 Yourself hydroponic supply store on Sunset Drive in
13 Antioch?

14 A. Can I look at my police report?

15 Q. If it'll refresh your recollection. 11:50:46

16 A. Please. Thank you. Yes, sir, I did.

17 Q. Okay. Did you write -- do you have --
18 okay. Do you need that in front of you?

19 A. Are we going to be --

20 MR. BLECHMAN: If you're going to ask him 11:51:21
21 a bunch of questions, if you wrote this and that in
22 his report, I mean, do you want to make it an
23 Exhibit?

24 MR. PORI: Q. No. Because I don't want
25 any complaints about Rule 26. So I'm just using it 11:51:29

1 not -- I'm not required under the Rules to produce 11:55:17
2 it. So that's how it's going.

3 MR. BLECHMAN: Well, I disagree a little
4 bit.

5 MR. PORI: Well, that's okay. 11:55:25

6 MR. BLECHMAN: But we'll let the judge
7 sort it out down the road.

8 MR. PORI: Of course. That's fine.
9 That's fine.

10 THE WITNESS: Okay. I've reviewed it. 11:57:12

11 MR. PORI: Q. Okay. When you wrote
12 your report, you wrote on October 14th, '09, "The
13 Antioch Police narcotics unit was conducting an
14 investigation into the Grow It Yourself hydroponic
15 supply store on Sunset Drive in Antioch." 11:57:31

16 Was that the first sentence of your
17 report?

18 A. Yes, sir.

19 Q. And the second sentence of your report
20 was, "We had served a search warrant on the business 11:57:37
21 and were inside the business gathering evidence of
22 illegal marijuana sales."

23 Did you write that sentence in your
24 report?

25 A. I did. 11:57:47

1 Q. So it wasn't an intentional -- it wasn't 12:01:34
2 intentionally written to misrep- -- misrepresent
3 your presence at the scene of the Grow It Yourself
4 Gardens, was it?

5 A. I did not intend to misrepresent anybody. 12:01:45
6 My -- my statement -- what I intended to place in
7 the police report was that we were serving the
8 search warrant of The Fashion Statement, which led
9 us to further investigate the marijuana possession.
10 And we were awaiting the search warrant, but what I 12:02:03
11 wrote was that we were serving the search warrant.

12 Q. Right. In other words --

13 A. In actuality, I was still standing by for
14 the search warrant.

15 Q. So the way you wrote your report, though, 12:02:14
16 it -- it essentially indicates that you were --
17 the -- the narcotics unit was conducting an
18 investigation into Grow It Yourself hydroponic
19 supply store in Antioch. Second sentence, "We had
20 served a warrant on the business and were inside the 12:02:34
21 business gathering evidence of illegal marijuana
22 sales," correct?

23 A. That's the way I wrote it, yes, sir.

24 Q. And what you meant to say is that -- what?
25 That you were gathering evidence before the warrant 12:02:43

1 it as freezing the -- the location? 12:38:52

2 A. Sure. I understand what you mean.

3 Q. Okay. So, uhm, what -- under what

4 circumstances is it appropriate to seize a location

5 pending the inch -- issuance of a search warrant? 12:39:05

6 MR. BLECHMAN: You said seize. Do you

7 mean freeze?

8 MR. PORI: Q. Freeze.

9 A. So it would depend on the circumstances,

10 but basically the purpose of freezing a location 12:39:15

11 would be to, uhm, protect the integrity of the

12 location itself, protect the integrity of the

13 evidence on scene, protect the safety of all parties

14 involved.

15 Q. What information do you need before you 12:39:39

16 have the legal authority, as a -- as a police

17 officer, to freeze a business?

18 MR. BLECHMAN: Calls for a legal

19 conclusion. Incomplete hypothetical. Overbroad.

20 Vague and ambiguous. Go ahead and respond. 12:39:55

21 THE WITNESS: So basically you would need

22 to have reason to believe that a crime is being

23 committed on a location, and have reason to believe

24 that the freezing of that location would be the

25 appropriate action to do so. And that would be in 12:40:11

1 you're asking. 12:46:41

2 Q. I'm asking what constitutes freezing a

3 business?

4 MR. BLECHMAN: Vague and ambiguous.

5 And -- and asked and answered. Go ahead. 12:46:48

6 MR. PORI: Q. What -- what do you do to

7 freeze a business? I'll ask that question.

8 A. Well, like I stated before, you would

9 remove the employees and the customers from the

10 business so that you could control and ensure the 12:46:59

11 integrity of the evidence is kept intact, and ensure

12 the safety of all parties involved are kept intact.

13 So basically you would start with removing all

14 people from the business itself.

15 Q. Okay. And then what happens after you 12:47:20

16 remove everyone from the business?

17 A. You conduct a safety sweep to make sure

18 that all parties are accounted for and that we don't

19 have any individuals who might be hiding or lying in

20 wait. 12:47:33

21 Q. And what -- what is the scope of a safety

22 sweep?

23 A. You know, like I said, you would be

24 looking to make sure that nobody is hiding or lying

25 in wait, there's no obvious traps or hazards that 12:47:45

1 at the time. 13:11:25

2 Q. Do you -- okay. Do you recall being in

3 the -- and now did you see Detective Aiello walking

4 into the store?

5 A. I'm sorry. I was looking at you. 13:11:33

6 Q. Yeah, I don't blame you. Going to try it

7 again. Okay. Do you see Detective Aiello there?

8 A. I do.

9 Q. At some point, does he turn around and

10 walk into the -- into the store? You see him turn 13:11:42

11 around and walking into the store?

12 A. Yes.

13 Q. Okay. Do you know where he went?

14 A. I do not.

15 Q. Is that -- is that part of freezing the 13:11:51

16 store? Walking into the store after it's been

17 cleared for suspects?

18 A. It may be.

19 MR. BLECHMAN: Incomplete hypothetical.

20 Argumentative. Lacks foundation. You can respond. 13:12:00

21 THE WITNESS: It may be.

22 MR. PORI: Q. Based on what?

23 A. I don't know what it is that he was doing.

24 Q. What would he be doing while the store is

25 being -- after the store had been cleared of 13:12:14

1 suspects? What would he be doing inside the store? 13:12:17

2 MR. BLECHMAN: Calls for speculation. You

3 can respond.

4 THE WITNESS: I don't recall what he was

5 doing. 13:12:22

6 MR. PORI: Q. What should he have been

7 doing after the store had been frozen?

8 MR. BLECHMAN: Overbroad. Lacks

9 foundation. You can respond.

10 THE WITNESS: I don't know. 13:12:29

11 MR. PORI: Q. Should he have -- should

12 he be walking inside the store after it's frozen?

13 A. If he had reason to, then sure.

14 Q. What reason would he -- what reason -- do

15 you know of any lawful reason an officer has to go 13:12:40

16 into a store after it's been frozen?

17 MR. BLECHMAN: Hold on. Calls for a legal

18 conclusion. Lacks foundation. Calls for

19 speculation. Incomplete hypothetical.

20 THE WITNESS: There may be. I don't know 13:12:54

21 if he had a valid reason because I don't know what

22 he was doing at the time.

23 MR. PORI: Q. Okay. You didn't ask

24 him?

25 A. I may have, but it was a long time ago and 13:13:02

1 A. Video cameras? 13:26:55

2 Q. Yeah, video cameras.

3 A. Yes.

4 Q. And you were concerned that the video

5 cameras were -- were being used to surveil your 13:26:59

6 activities inside the store?

7 A. Yes.

8 Q. Okay. And so you knew where they were,

9 and you were concerned about their presence in the

10 store surveilling your activities while you were 13:27:16

11 inside the store, right?

12 MR. BLECHMAN: It's compound. Answer the

13 second question.

14 THE WITNESS: All right.

15 MR. PORI: Q. No -- okay. Well, it's 13:27:23

16 okay. You saw cameras and -- and you were concerned

17 about the fact that they were depicting what you

18 were doing in the store; isn't that right?

19 A. I saw cameras and I was concerned that

20 people were monitoring my actions, and I was 13:27:37

21 concerned for mine and the other safety -- safety of

22 the other officers that were present.

23 Q. Okay. And so what did you do to disable

24 those cameras to prevent anybody from looking at

25 you? 13:27:51

1 MR. BLECHMAN: Lacks foundation. You 13:27:53
2 can -- assumes facts. You can respond.

3 THE WITNESS: I did not disable any
4 cameras.

5 MR. PORI: Q. You didn't? Why did you 13:27:58
6 not disable any cameras?

7 A. Well, to be honest with you, I don't know
8 how to disable cameras.

9 Q. Well, did -- did you cover them -- try to
10 cover them up or -- 13:28:09

11 A. No, not to -- not that I can recall.

12 Q. So you weren't concerned enough about them
13 that you were going to move them in any way or try
14 to -- to cover them to prevent people from looking
15 at what you were doing while you were executing a 13:28:22
16 search warrant in The Fashion Statement, right?

17 A. I -- there were several cameras that were
18 present, and I did move one camera.

19 Q. You moved only one?

20 A. Yes. 13:28:35

21 Q. But the other ones inside the store you
22 did not move?

23 A. No. That is correct.

24 Q. And why not?

25 A. Because they weren't within my reach and 13:28:39

1 that you turned the camera was for your own safety? 14:39:25

2 A. Yes.

3 Q. At that point, did you -- why -- at that
4 point, why did you not go into the Grow It Yourself
5 Gardens and secure it as you did sometime later? 14:39:35

6 A. We had to finish securing the first
7 location that we were in. And then the
8 information -- the -- The Fashion Statement
9 location. And then at the time, we -- I -- I don't
10 know when it was that Detective Vincelet decided 14:39:51
11 that he wanted to get into the Grow It Yourself
12 store.

13 Q. Well, my -- my question is, is if you were
14 concerned for your safety and that -- and that --
15 that you might be ambushed -- and I -- by ambushed, 14:40:04
16 I presume you mean someone might come after you with
17 a firearm or some kind of weapon?

18 A. Could be anything. If somebody's remotely
19 watching me, watching me from another location, I
20 want to make sure that they're not doing so with ill 14:40:17
21 intentions.

22 Q. And so -- understood. And so at that --
23 at the point that you knew that you were being
24 monitored, why did you not, uhm, immediately go into
25 the store and secure your safety by clearing 14:40:28

1 everyone out and clearing the store? 14:40:31

2 A. At that point, I didn't think that I had

3 reason to.

4 Q. Well, then, why did you turn the camera?

5 A. Because I did not want to be ambushed by 14:40:39

6 anybody who might be remotely monitoring me.

7 Q. Once you learned that you were being

8 remotely monitored, what did you do next?

9 A. I went through -- we made sure that we

10 continued our route through The Fashion Statement, 14:40:52

11 including the warehouse that was just displayed in

12 the video, and we rendered it safe by making sure

13 that all individuals were accounted for.

14 Q. By the time you went into the warehouse,

15 hadn't everybody else been -- by the time you 14:41:09

16 entered the warehouse, hadn't the door been locked

17 and the employees inside the store already gone?

18 MR. BLECHMAN: In The Fashion Statement?

19 MR. PORI: Q. In The Fashion Statement?

20 A. Yes. 14:41:24

21 Q. Okay. So by the time you went into the

22 warehouse of The Fashion Statement, you had walked

23 through the -- the sales area, correct?

24 A. Correct.

25 Q. And there was no one there, correct? 14:41:33

1 into The Fashion Statement if you were concerned 14:42:10
2 that you were going to be ambushed? Why did you not
3 take steps to protect yourself and your fellow
4 officers?

5 A. I was in The Fashion Statement. 14:42:18

6 Q. When -- aft- -- after you were in The
7 Fashion Statement and you turned the camera for your
8 own safety, why did you not go -- then go into the
9 Grow It Yourself Gardens and -- to secure the safety
10 of yourself and your other officers? 14:42:31

11 A. I didn't know that --

12 MR. BLECHMAN: It's asked and answered.
13 But go ahead and answer it again.

14 THE WITNESS: I didn't know that I had
15 reason to at that time. 14:42:36

16 MR. PORI: Q. So you were concerned
17 that you would be ambushed, but you didn't know who
18 would ambush you; is that the idea?

19 A. I can take steps to protect my safety
20 without having all the answers to all my questions. 14:42:48

21 Q. Okay. So you're saying that the reason
22 you turned the camera was for officer safety?

23 A. Yes, sir.

24 Q. Okay. Uhm, and you realized that, uhm,
25 cameras can be useful in preserving evidence, 14:43:04

1 you can't tell me how long these individuals were 15:34:21
2 detained, right?

3 A. I don't recall.

4 Q. As a supervising officer, though, you --
5 you -- you believe this -- this behavior is 15:34:27
6 consistent with the lawful seizure of -- I mean
7 freezing of a business, correct?

8 A. I do.

9 Q. And you believe this is a proper,
10 lawful -- and based upon the right to freeze the 15:34:43
11 business, you believe, as a supervising officer,
12 that these individuals are being lawfully asked to
13 sit down on these buckets, correct?

14 MR. BLECHMAN: Calls for a legal
15 conclusion. Go ahead and respond. 15:34:55

16 THE WITNESS: It appears so.

17 MR. PORI: Q. Okay. As a supervising
18 officer, you believe these individuals can be
19 detained because there might be a possible marijuana
20 grow inside the store; isn't that right? 15:35:07

21 A. They're going to be detained until you can
22 determine their involvement in the crime that we're
23 investigating.

24 Q. Okay. Which is what?

25 A. The marijuana cultivation and illegal 15:35:21

1 Q. Did you have any further involvement with 15:39:20
2 the case, other than on this day, the incident?

3 A. On this particular search warrant?

4 Q. Yes. October 14th, 2009.

5 A. Not that I can recall. 15:39:32

6 Q. You see the individual wearing the white
7 shirt holding something? Who is that? Is that
8 Stephanie Chalk?

9 A. It looks like it.

10 Q. Okay. Do you see Stephanie Chalk walking 15:40:22
11 in the building?

12 A. I did.

13 Q. Okay. And what does Stephanie Chalk do?

14 A. She's a community service officer.

15 Q. What's a community service officer do? 15:40:34

16 A. She was assigned to the investigations
17 bureau for -- as a photographer in evidence
18 collection.

19 Q. Okay. So she -- she is in the store while
20 these individuals are being detained so that she can 15:40:47
21 do what?

22 A. I don't know.

23 MR. BLECHMAN: Calls for speculation.

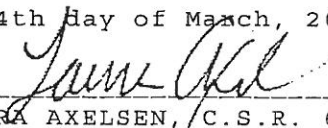
24 MR. PORI: Q. Who's that? Who's
25 present at the door? Is that Detective Joannides? 15:41:05

1
2 CERTIFICATE

3 I, the undersigned, a Certified Shorthand
4 Reporter, State of California, hereby certify that
5 the witness in the foregoing deposition was by me
6 first duly sworn to testify to the truth, the whole
7 truth, and nothing but the truth in the
8 within-entitled cause; that said deposition was
9 taken at the time and place therein stated; that the
10 testimony of the said witness was reported by me, a
11 disinterested person, and was thereafter transcribed
12 under my direction into typewriting; that the
13 foregoing is a full, complete, and true record of
14 said testimony; and that the witness was given an
15 opportunity to read it and, if necessary, correct
16 said deposition and to subscribe the same; that
17 prior to the completion of the foregoing
18 deposition, review of the transcript was requested.

19 I further certify that I am not of counsel
20 or attorney for either or any of the parties in the
21 foregoing deposition and caption named, nor in any
22 way interested in the outcome of the cause named in
23 said caption.

24 Executed this 24th Day of March, 2015.

25 
LAURA AXELSEN, C.S.R. 6173

